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In the Supreme Court of the United States

OCTOBER TERM, 1996

MARILYN R. HATCH, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

SUPPLEMENTAL BRIEF FOR THE UNITED STATES

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3 pp

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Pursuant to Rule 15.8 of the Rules of the Court, the Solicitor General respectfully files this supplemental brief to bring to the Court's attention the opinion in *United States* v. *Unterburger*, No. 95-5199, 1996 WL 577591 (11th Cir. Oct. 23, 1996).

One of the questions presented in the instant case is whether petitioner was constitutionally entitled to have a jury at her trial on a charge that carried a maximum penalty of six months in jail and a $10,000 fine. In our brief in opposition, we pointed out that the asserted conflict in the courts of appeals on that issue did not warrant review by the Court because all but one of the cases cited by petitioner were decided

prior to the Court's adoption, in *Blanton* v. *City of North Las Vegas*, 489 U.S. 538, 543 (1989), of the presumption that a maximum six-month imprisonment term signifies a petty offense. We distinguished the other case cited by petitioner on other grounds. We also contended that review at this time would be premature because there is no basis for believing that, in light of *Blanton* and *United States* v. *Nachtigal*, 507 U.S. 1, 3 (1993) (per curiam), courts of appeals now would reach a decision contrary to that of the court below.

In *Unterburger*, the Eleventh Circuit agreed with, and followed, the decision of the Seventh Circuit in the instant case and held that defendants who faced a maximum penalty of six months in jail and a $10,000 fine under the Freedom of Access to Clinic Entrances Act of 1994, 18 U.S.C. 248, were not entitled to a jury trial. *Unterburger*, 1996 WL 577591, at *2-*3, citing *Lewis* v. *United States*, 116 S. Ct. 2163 (1996) (reaffirming the *Blanton* presumption and its emphasis on the maximum authorized prison term as the basis for determining whether an offense is serious or petty). This express agreement between the only two courts of appeals that have addressed the issue in the context of the Access Act provides additional evidence that further review of the issue is not warranted.

Respectfully submitted.

WALTER DELLINGER
Acting Solicitor General

OCTOBER 1996